Sunshine Act Meetings

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This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

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FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, January 7, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United State Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cases-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or othe persons participating in the conduct of the affairs thereof:

Name of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and)c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: The Des Plaines Bank, Des Plaines, Illinois.

Application for capital assistance under section 13(i) of the Federal Deposit Insurance Act:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Name of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor the the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: December 31, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–392 Filed 1–2–85; 2:14 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, January 7, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D. C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: December 31, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc 85–393 Filed 1–2–85; 2:14 pm]

BILLING CODE 6714-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION

January 2, 1985.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.SC. 552b:

AGENCY HOLDING MEETING: Energy Regulatory Commission.

TIME AND DATE: 10:00 a.m., January 9, 1985.

PLACE: 825 North Capital Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda:

* Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does

not include a listing of all papers relevant to the items of the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 805th meeting—January 9, 1985, Regular Meeting (10:00 a.m.)

CAP–1.
Project No. 8256–000, Electro Technologies, LTd.
CAP–2.
Project No. 8429–003, Aliceville Hydro Associates
CAP–3.
Project No. 7809–002, Emerson Falls Hydro Associates
CAP–4.
Project No. 8117–001, City of Yakima, Washington
CAP–5.
Project No. 8154–002, City of Yakima, Washington
CAP–6.
Project Nos. 7377–004 and 005, Renewable Resources Development and Hat Creek Corporation
Project Nos. 7379–004 and 005, Renewable Resources Development and Slate Creek Resources, Inc.
Project Nos. 7378–003, 004, 7380–004, 005, 7383–004 and 005, Renewable Resources Development and Carlson Hydroelectric Corporation
Project Nos. 7381–004 and 005, Magnum Ranch, Inc.
Project Nos. 7382–004 and 005, Renewable Resources Development, Upper Lake Creek Corporation, Middle Lake Creek Corporation and Lower Lake Creek Corporation
Project Nos. 7384–004 and 005, Renewable Resources Development and David E. Cereghino
Project Nos. 7385–004 and 005, Renewable Resources Development, et al.
Project Nos. 7386–004 and 005, Renewable Resources Development and Magnum Ranch, Inc.
Project Nos. 7429–005 and 006, China Cow Hydro Company, Close Quarters, Inc., Double O. Hydro Company and Diamond T. Hydro Company
Project Nos. 7495–003 and 004, Cook Electric, Inc.
Project Nos. 7589–005 and 006 Paul S. Boyer
CAP–7.
Project No. 7737–002, WP, Inc.
CAP–8.
Project No. 8410–001, Ashuelot Hydro Partner, Ltd.
CAP–9.
Project Nos. 7899–001 and 002, Renewable Resources Development and the Jungert Corporation
CAP–10.
Project No. 8156–001, James W. Caples
Project Nos. 8157–001 and 002, Warren Osborne
CAP–11.
Omitted
CAP–12.
Project Nos. 8229–001 and 002, Cook Electric Incorporated
CAP–13.
Project Nos. 8194–001 and 002, James W. Caples
CAP–14.
Project Nos. 3503–000 and 001, James B. Howell
Project No. 4025–000, Willis D. Deveny
Project No. 5865–000, David Cereghino
Project No. 5965–000, Firmin O. Gotzinger of Pollock, Idaho
Project Nos. 6175–000, 002, 6208–000, 002, 6230–000, 001, 6231–000, 001, 6245–000, 001, 002, 6246–000, 001, 002, 6265–000, 001, 6267–000, 001 and 6442–000, Lester Kelley, Vernon Ravenscroft and Helen Chenoweth
Project Nos. 6433–000, 001 and 003, Warren B. Nelson
Project Nos. 6434–000 and 001, Thomas B. Nelson,
Project Nos. 6435–000 and 001, Joseph B. Nelson
Project Nos. 6589–000, 001, 6590–000, 001, 6591–000 and 001, Hy-Tech Company
Project No. 6702–000, the Superior Oil Company
Project Nos. 6755–000 and 001, Brown's Industries, Inc.
Project Nos. 6809–000, 6810–000 and 6811–000, Douglas Mendenhall
Project No. 7184–000, Richard A. and Carole K. Sorensen
Project Nos. 7225–000 and 003, Little Salmon River Estates
Project No. 7246–000, Richard L. Pullen and/or Bobbie Pullen
Project No. 7377–000, Renewable Resources Development and Hat Creek Corporation
Project Nos. 7378–000, 7380–000 and 7383–000, Renewable Resources Development and Carlson Hydroelectric Corporation
Project No. 7379–000, Renewable Resources Development and Slate Creek Resources, Inc.
Project No. 7381–000, Magnum Ranch, Inc.
Project No. 7382–000, Renewable Resources Development and Upper Lake Creek Corporation, Middle Lake Creek Corporation and Lower Lake Creek Corporation
Project No. 7384–000, Renewable Resources Development and David E. Cereghino
Project No. 7385–000, Renewable Resources and Cross Ranch Hydro, Inc., JJAK Hydro Company, Hat Creek Corporation and Wicks Family Corporation
Project No. 7386–000, Renewable Resources and Magnum Ranch, Inc.
Project No. 7429–000, China-Cow Hydro Company, Close Quarters, Inc., Double-O Hydro Company and Diamond T Hydro Company
Project Nos. 7495–000 and 7859–000, Cook Electric, Inc.
Project No. 7589–000, Paul S. Boyer
Project No. 7300–000, China-Cow Hydro Company
Project No. 7298–000, Squaw Creek Hydro Corporation of McCall, Idaho
Project No. 7301–000, Double-O Hydro Company
Project No. 7334–000, Double-O Hydro Company and Double-T Hydro Company
Project No. 7339–000, Cross-O Ranch, Inc. and Hat Creek Corporation
Project No. 7340–000, JJAK Hydro Company
Project No. 7899–000, Renewable Resources Development and the Jungert Corporation
CAP–15.
Project No. 1984–009, Wisconsin River Power Company
CAP–18.
Project No. 2821–005, City of Portland, Oregon
CAP–17.
Docket No. QF84–434–00, Luz Solar Partners Ltd., et al.
CAP–18.
Docket No. ER85–130–000, Illinois Power Company
CAP–19.
Docket Nos. ER84–571–001 and ER84–572–001, Utah Power & Light Company
CAP–20.
Docket No. ER84–705–001, Boston Edison Company
CAP–21.
Docket No. ER84–504–002, Allegheny Generating Company
CAP–22.
Docket No. ER78–417–006, Kentucky Utilities Company
CAP–23.
Docket No. ER84–574–002, Holyoke Water Power Company and Holyoke Power and Electric Company
CAP–24.
Docket Nos. ER84–576–004 and 005, Wisconsin Power & Light Company
CAP–25.
Omitted
CAP–26.
Docket No. ER83–694–000, West Texas Utilities Company
CAP–27.
Docket No. EL84–30–001, Gulf States Utilities Company

Consent Miscellaneous Agenda

CAM–1.
Docket No. RM79–76–231 (Texas–14 addition), high-cost gas produced from tight formations
CAM–2.
Docket No. RM79–76–235 (Colorado–39), high-cost gas produced from tight formations

Consent Gas Agenda

CAG–1.
Docket No. RP85–47–000, East Tennessee Natural Gas Company
CAG–2.
Docket No. RP85–43–000, Columbia Gas Transmission Corporation
CAG–3.
Docket Nos. TA85–1–53–000, 002, TA84–1–53–000, et al., and TA83–1–53–000, et al., KN Energy, Inc.
CAG–4.
Docket Nos. RP84–67–001 and 002, Mississippi River Transmission Corporation v. United Gas Pipe Line Company
CAG–5.
Docket Nos. RP84–120–001, TA85–1–35–000 and 002, West Texas Gas, Inc.
CAG–6.
Docket No. TA85–1–33–003, El Paso Natural Gas Company
CAG–7.

Docket Nos. RP82-125-012 and 013, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG-8.
Docket Nos. TA85-1-23-000 and 001, Eastern Shore Natural Gas Company
CAG-9.
Docket Nos. TA85-1-43-000, 001 and TA84-2-43-001, Northwest Central Pipeline Corporation
CAG-10.
Docket No. TA83-2-18-000, National Fuel Gas Supply Corporation
CAG-11.
Omitted
CAG-12.
Docket No. TA84-1-15-000, Mid-Louisiana Gas Company
CAG-13.
Docket No. RP84-13-000, Michigan Consolidated Gas Company-Interstate Storage Division
CAG-14.
Docket No. RP83-138-000, Distrigas of Massachusetts Corporation
CAG-15.
Docket No. RP84-63-000, Mississippi River Transmission Corporation
CAG-16.
Docket No. ST84-1137-000, Cranberry Pipeline Corporation
CAG-17.
Docket Nos. RI84-10-000 through RI84-17-000, Phillips Petroleum Company, FERC Gas Rate Schedule Nos. 9, 483, 497, 498, 499, 500, 502 and 507
CAG-18.
Docket No. CI78-93-003, Pennzoil Oil & Gas Inc.
CAG-19.
Docket No. CI82-247-000, Ashland Exploration, Inc.
CAG-20.
Docket No. CI67-248-000, Beacon Gasoline Company
CAG-21.
Docket No. CP83-203-003, et al., Transcontinental Gas Pipe Line Corporation
CAG-22.
Docket No. CP84-700-001, Colorado Interstate Gas Company
CAG-23.
Docket No. CP82-487-003, Williston Basin Interstate Pipeline Company
Docket Nos. CP84-504-000, RP84-62-000, SA84-19-000, TA84-2-49-000, TA85-1-49-000, 001 and RP84-93-000, Montana-Dakota Utilities Company
CAG-24.
Docket Nos. RP83-14-002, et al., RP83-81-015, et al., CP83-254-000, 029, et al., CP83-335-000 and 032, et al., Montana-Dakota Utilities Company
CAG-25.
Docket Nos. CP75-23-023 and CP75-120-016, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CAG-26.
Docket No. CP84-258-001, Panhandle Eastern Pipe Line Company
CAG-27.
Docket No. CP84-577-001, Trunkline Gas Company
CAG-28.
Docket No. CP84-366-000, Valero Transmission Company and Valero Industrial Gas Company
CAG-29.
Docket No. CP83-411-000 (Phase II), Equitable Gas Company
CAG-30.
Docket No. CP84-701-000, Cranberry Pipeline Corporation
Docket No. G-5236-005, Cabot Corporation
CAG-31.
Docket No. CP85-12-000, Texas Gas Transmission Corporation
CAG-32.
Docket No. CP85-22-000, the Inland Gas Company, Inc.
CAG-33.
Docket Nos. CP85-13-000 and TC85-4-000, Montana-Dakota Utilities Company
CAG-34.
Docket No. CP83-439-002, Southern Natural Gas Company
CAG-35.
Docket No. CP84-257-000, Northern Natural Gas Company, Division of Internorth, Inc.
Docket No. G-2621-000, Phillips Petroleum Company

I. Licensed Project Matters

P-1.
Reserved

II. Electric Rate Matters

ER-1.
Docket No. ID-2067-000, John F. White

Miscellaneous Agenda

M-1.
Reserved
M-2.
Reserved
M-3.
Docket Nos. RM84-6-015 Through 026, Refunds Resulting From Btu Measurement Adjustment

I. Pipeline Rate Matters

RP-1.
Docket Nos. TA84-2-37-006 and 007, Northwest Pipeline Corporation
RP-2.
Docket Nos. RP80-136-000 and 004, Southern Natural gas Company and Southern Energy Company

II. Producer Matters

CI-1.
Docket No. CI85-27-000, Mesa Petroleum Company
CI-2.
Docket No. CI85-51-000, Exxon Corporation

III. Pipeline Certificate Matters

CP-1.
Docket No. CP82-355-000, Natural Gas Pipeline Company of America
CP-2.
Docket No. CP85-105-000, United Gas Pipe Line Company
CP-3.
Docket No. CP85-67-000, United Gas Pipe Line Company

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-415 Filed 1-2-85; 3:37 pm]

BILLING CODE 6717-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, January 9, 1985, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed changes to the Plans administered under the Federal Reserve System's employee benefits program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-34030 Filed 12-31-84; 4:23 pm]

BILLING CODE 6210-01-M

5

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

SUNSHINE ACT MEETING

AGENCY HOLDING THE MEETING: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: January 9-10, 1985, 9:00 a.m.

PLACE: Council Office Meeting Room, 850 SW., Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

January 9

1. Council Decision on a Policy for Reducing the Load Uncertainty of the Direct Service Industries
2. Revised Cost of Delaying the Model Conservation Standards Issue Paper
3. Staff Presentation on Resource Financial and Economic Assumptions
4. Staff Presentation and Council Decision on Technical Corrections to the Model Conservation Standards
5. Public Comment on Economic/Demographic Assumptions Issue Paper
6. Public Comment on Environmental Criteria for Resource Acquisition Issue Paper
7. Council Business

January 10

8. Public Hearing on Proposed Fish and Wildlife Goals Amendment
9. Continuation of any agenda items that were not completed on January 9

Public comment will follow each item.

FOR FURTHER INFORMATION CONTACT:

Ms. Bess Wong (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-416 Filed 1-2-85; 3:51 pm]

BILLING CODE 0000-00-M

federal register

Friday
January 4, 1985

Part II

Federal Trade Commission

16 CFR Part 456

Ophthalmic Practice Rules; Proposed Trade Regulation Rule; Notice of Proposed Rulemaking,

FEDERAL TRADE COMMISSION

16 CFR Part 456

Ophthalmic Practice Rules; Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would remove total bans imposed by state law and certain forms of commercial ophthalmic practice. The proposed rule is intended to prevent consumer injury arising from public restraints on the permissible forms of ophthalmic practice that appear to increase consumer prices for ophthalmic goods and services, but which do not appear to protect the public health or safety. The proposed rule also contains minor modifications intended to clarify the prescription release requirement of 16 CFR Part 456 (the Advertising of Ophthalmic Goods and Services Trade Regulation Rule, referred to in this notice as the "Eyeglasses Rule").

This notice sets out the rulemaking procedures to be followed, the text of the proposed rule (set forth as a modification of the Eyeglasses Rule), reference to the legal authority under which the rule is proposed, a statement of the Commission's reasons for proposing this rule, a list of specific questions and issues upon which the Commission Particularly desires written and oral comment, an invitation for written comments, and instructions for prospective witnesses and other interested persons who desire to present oral statements or otherwise participate in this proceeding.

DATES: Written comments must be submitted on or before April 5, 1985.

Notification of interest in questioning witnesses must be submitted on or before March 8, 1985.

Prepared statements of witnesses and exhibits, if any, must be sumitted on or before April 26, 1985 for witnesses at the Washington, D.C., hearings and May 31, 1985 for witnesses at the San Francisco, California, hearings.

Public hearings commence at 9:30 a.m. on May 20, 1985 in Washington, D.C., and at 9:30 a.m. on June 17, 1985 in San Francisco, California.

ADDRESSES: Written comments notifications of interest, prepared statements of witnesses and exhibits should be submitted in five copies to James P. Greenan, Presiding Officer, Federal Trade Commision, Washington, D.C., 20580, 202–523–3564. The Public hearings will be held in Room 332 Federal Trade Commision Building, 6th Street and Pennsylvania Avenue NW., Washington D.C., and in Room 12470, San Francisco Regional Office of the Federal Trade Commission, 450 Golden Gate Avenue, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: Gary Hailey, Matthew Daynard, or Renee Kinscheck Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, 202–523–3452, 202–523–3427, or 202–523–3377.

SUPPLEMENTARY INFORMATION: The proposed rule would remove four major restraints imposed by state law on premissible forms of commercial practice: (1) Restrictions on employer-employee or other business relationships between optometrists or opticians and non-professional corporations or unlicensed persons; (2) limitations on the number of branch offices an optometrist or optician may operate: (3) restictions on the practice of optometry on the premises of merchantile establishments (such as department stores); and (4) bans on the practice of optometry under a trade name.

The proposed rule would only prevent state or local governments from enforcing total bans on these forms of commercial ophthalmic practice; it would not interfere with the states' ability to regulate specific harmful practices as long as commercial practice itself is not directly or indirectly prohibited.

"Commercial practice" in the retail optical market is generally understood to refer to large-scale, high-volume providers. "Non-commercial practice," on the other hand, describes small firms or independent "solo" practitioners.

Legal impediments to the practice of optometry and opticianry in commercial settings restrain the growth and development of retail optical firms that offer optometric services and also restrain other high-volume, "commercial" businesses, which, through managerial efficiencies and economies of scale, are often able to charge lower prices for ophthalmic goods and services than small "noncommercial" practitioners. These restrictions also prevent commercial firms, as well as opticians and non-dispensing optometrists, from competing effectively with dispensing optometrists and ophthalmologists who offer both examination and dispensing services. Individual practitioners are also precluded from establishing practices in mercantle locations such as shopping centers or department stores, where the potential for high-volume business exists.

Proponents of commercial practice restraints justify them as necessary to protect the public health, safety and welfare. The Commission has reason to believe, however, that these practice restrictions unnecessarily increase the price and reduce the accessibility of vision care without having any significant positive impact on the quality of vision care. This tentative belief is based primarily on empirical research conducted by the Commission's Bureaus of Economics and Consumer Protection and othe published studies. Comment on the methodology and validity of those studies is specifically requested.

The proposed rule would also modify slightly the prescription release requirement of the Eyeglasses Rule, 16 CFR Part 456. The proposed changes are intended to eliminate areas of confusion which existed concerning the scope of the Eyeglasses Rule. The proposed rule modifications would involve no preemption of state law.

Copies of the staff report (entitled "State Restrictions on Vision Care Providers: The Effects on Consumers," July 1980), the Bureau of Economics report (entitled "Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry," September 1980), the contact lens report (entitled "A Comparative Analysis of Comsetic Contact Lens Fitting by Ophthalmologists, Optometrists and Opticians," December 1983), the Bureau of Consumer Protection's study of the duplication of eyeglass lenses without a prescription (entitled "A Comparison of a Random Sample of Eyeglasses," July 1979), and the study of the impact of the prescription release requirement (entitled "FTC Eyeglasses Study: An Evaluation of the Precription Release Requirement," 1981) may be obtained in person or by mail from: Public Reference Room (Room 130), Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

Section A. Statement of the Commission's Reasons for the Proposed Rule

On January 20, 1976, the Commission directed the staff on the Bureau of Consumer Protection to initiate an investigation to determine whether restrictions on forms of commercial ophthalmic practice and limitations on the scope of practice of opticianry were unfair acts or practices within the meaning of section 5(a)(1) of the Federal Trade Commission Act. The decision to commence this investigation was based on consideration of evidence received

during the Commission's earlier ophthalmic advertising rulemaking proceeding. That investigation examined the adequacy of information available to consumers of vision care. It focused on how state and private advertising restrictions affect the cost, availability, and quality of vision care.[1] Evidence presented in that proceeding indicated that advertising restictions were but one part of a larger system of public and private restraints on ophthalmic practice which may limit competition, increase prices, and limit the availability of vision care.

The Commission staff addressed various types of public and private restraints in the course of this second investigation. With repect to restrictions on forms of commercial practice by ophthalmic providers, the staff examined four restraints imposed by state law: (1) Restrictions on employer-employee or other business relationships between optometrists or opticians and lay individuals and non-professional corporations; (2) limitations on the number of branch offices an optometrist or optician may operate; (3) restrictions on the practice of optometry and opticianry in commercial locations or on the premises of mercantile establishments; and (4) bans on the use of trade names by optometrists. Two categories of limitations on the scope of practice of opticianry were also studied by the staff: (1) Restrictions preventing opticians from fitting contact lenses; and (2) restrictions prohibiting opticians from duplicating existing eyeglasses lenses in order to produce new pairs of eyeglasses.

Staff assessed the impact on the price, quality, and availability of vision care of these restrictions. The ultimate issue addressed was whether higher prices and diminished access to vision care result from these restrictions and, if so, whether such consumer injury is counterbalanced by positive effects on quality of care. Staff received comments from private citizens, members of the professions involved and their professional associations, and government officials during the investigation. Staff also researched current state laws, private associations' regulations, and industry practices. To obtain data on the impact of these restrictions on the price, availability and quality of vision care, staff performed several research studies: (1) A study by the FTC's Bureau of Economics measured the price and quality effects of commercial practice restrictions; (2) a shopper survey of optical establishments measured the accuracy of the duplication process; and (3) a study administered by Bureau of Consumer Protection staff measured the comparative ability of ophthalmologists, optometrists, and opticians to fit contact lenses. Professional groups including the American Academy of Ophthalmology, the Contact Lens Associaton of Ophthalmologists, the American Optometric Association, the Contact Lens Society of America, the Opticians Association of America, and the National Association of Optometrists and Opticians assisted in the design and administration of the contact lens fitting study and the American Optometric Association reviewed and analyzed the BE commercial practices study data. Studies performed by others were also reviewed.

The staff has set forth the results of its initial investigation in a publicly available report entitled "State Restrictions on Vision Care Providers: The Effect on Consumers" (July 1980). The Commission's decision to commence this rulemaking proceeding is based on consideration of the staff report and the public comments received in response to the Advance Notice of Proposed Rulemaking ("ANPR").[2] The ANPR, which was published in the **Federal Register** on December 2, 1980, requested comment on the issues presented by this investigation and on what action, if any, the Commission should take. Specifically, the public was invited to comment on the evidence and findings contained in the staff report, and on various alternatives to rulemaking. During the 60-day comment period, 247 comments were received from consumers, industry members and government officials. After consideration of the evidence contained in the staff report, the ANPR comments, and the recommendations of the staff, the Commission has determined that rulemaking is the most appropriate way to explore further the issues raised by this investigation.

With respect to the proposed rule provisions concerning commercial practice restrictions, the staff report presents evidence that state laws which restrict the ability of optometrists to practice in commecial settings raise consumer prices but do not maintain or enhance the quality of vision care. Results obtained from the 1980 Bureau of Economics study ("BE Study") indicate that: (1) Prices of eyeglasses and eye examinations are significantly lower in cities where commercial practice is not restricted and in cities where advertising is not restricted; (2) commercial optometrists charge lower prices than non-commercial optometrists; (3) non-commercial providers who operate in markets where commercial practice is permitted charge less than their counterparts in cities where commercial practice is proscribed; and (4) there is no difference in overall quality of care between cities where commercial practice is permitted and cities where commercial practice is restricted. To assess quality, the study evaluated the accuracy of the prescriptions written by the sampled optometrists, the accuracy and workmanship of the eyeglasses dispensed by the examining optometrist, the thoroughness of the eye examination, and the extent of unnecessary prescribing of eyeglasses. Comment regarding the methodology and analysis of the BE study is requested below.

The 1983 Bureau of Consumer Protection and Bureau of Economics study of contact lens wearers concluded that: (1) The quality of cosmetic contact lens fitting provided by opticians and commercial optometrists was not lower than that provided by ophthalmologists and non-commercial optometrists, and (2) commercial optometrists charged significantly less for contact lenses than did any other group. To assess the quality of contact lens fitting, the study evaluated the relative presence or absence of several potentially pathological corneal conditions related to contact lens wear. Comment regarding the methodology and analysis of the contact lens study is requested below.

The staff recommendation that the Commission engage in rulemaking proceedings regarding commercial practice restrictions is based primarily on the results of these studies, which contradict the claim that the entry of commercial firms into the market lowers the overall level of quality of vision care. At the same time, the results show

[1] The Commission found public and private bans on nondeceptive advertising by vision care providers and those providers' failure to release spectacle prescriptions to be unfair acts or practices in violation of section 5 of the FTC Act. The resulting Eyeglasses Rule (16 CFR Part 456) eliminated those bans on nondeceptive advertising and required vision care providers to furnish copies of prescriptions to consumers after eye examinations. Subsequently, the U.S. Court of Appeals for the District of Columbia in American Optometric Association v. FTC, 626 F.2d 896 (D.C. Cir. 1980), upheld the prescription release requirement but remanded the advertising portions of the Eyeglasses Rule for further consideration in light of the Supreme Court decision in Bates v. State Bar of Arizona, 433 U.S. 350 (1977), which found the right of lawyers to advertise to be protected free speech under the First Amendment to the Constitution.

[2] 45 FR 79,823 (1980).

that average prices are significantly higher where commercial practice is restricted. Therefore, the Commission has reason to believe that these restrictions may be unfair acts or practices within the meaning of Section 5 of the FTC Act.

The proposed trade regulation rule would also modify the definition of the term "prescription" in the current Eyeglasses Rule to eliminate all references to contact lenses. Confusion has arisen as to whether eye doctors are required by the rule to state that patients whom they had examined were suitable candidates for contact lenses by writing "OK for contacts" or similar language on the prescription. This modification is consistent with staff's recommendation that the Commission not employ rulemaking to address the question of who should be permitted to fit contact lenses. Finally, the Commission has proposed several nonsubstantive changes to clarify the rule.

The staff report presented evidence that consumers are not always given eyeglasses prescriptions or contact lens specifications following the purchase of eyeglasses or contact lenses. If this were true, the report concluded, consumers' ability to obtain duplicate or replacement spectacle or contact lenses from the dispensers or fitters of their choice would be limited. This would be particularly true in states that prohibit duplication of spectacle lenses or contact lens fitting by opticians.

However, the staff report did not recommend rulemaking to eliminate those state restraints on duplication of lenses or contact lens fitting by opticians. The Commission concurs with this recommendation and, therefore, has not proposed rulemaking in this area. The staff report recommended that, instead of proposing to remove these state restraints, the Commission extend the prescription release requirement of the Eyeglasses Rule to require a consumer's eyeglasses dispenser or contact lens fitter to provide upon request a copy of that consumer's current eyeglasses prescription after the dispensing process is complete, or a copy of the complete contact lens specifications after the initial fitting process is complete. However, the proposed trade regulation rule does not contain provisions extending the prescription release requirement of the Eyeglasses Rule. The recommendations in the staff report regarding extension were based on complaints that consumers were sometimes denied access to their eyeglasses prescriptions and contact lens specifications. However, those complaints were few in number, and the Commission has no reason to believe that a significant number of dispensers and fitters are currently refusing to provide consumers with their prescriptions or specifications. Nevertheless, comment is requested on these issues.

The Commission has carefully and deliberately considered the staff report and recommended trade regulation rule and the comments received in response to the Advance Notice of Proposed Rulemaking. Based on the evidence presented to date, the Commission believes that the initiation of a rulemaking proceeding would be in the public interest.

The public is advised that the Commission has not adopted any findings or conclusions of the staff. All findings in this proceeding shall be based solely on the rulemaking record. Accordingly, the Commission invites comment on the advisability and manner of implementation of the proposed rule.

The Commission's Rules of Practice shall govern the conduct of the rulemaking proceeding, except that, to the extent that this notice differs from the Rules of Practice, the provisions of this notice shall govern. This alternative form of proceeding is adopted in accordance with § 1.20 of those rules (16 CFR 1.20).

Section B. Section-by-Section Analysis

The following discussion is intended to highlight the major provisions of the proposed rule, and to explain briefly their anticipated effect. Sections of the Eyeglasses Rule that would remain unchanged and which were explained in the Statement of Basis of Purpose of the Eyeglasses Rule[3] will not be described here.

Section 456.1 defines relevant terms and contains new definitions as well as technical modifications to terms in the Eyeglasses Rule.

The term "patient" has been substituted for the term "buyer" in paragraph (a) to conform more closely to industry usage.

The specific terms "ophthalmologist" and "optometrist" in paragraphs (e) and (f) have been substituted for the general word "refractionist" in § 456.1(h) of the original rule to define those categories of providers—Doctors of Medicine, Ostepathy and Optometry—who are qualified under state law to perform eye examinations. This change was made for two reasons. First, the use of the term "refractionist" in the original rule has caused confusion because it is not generally used by consumers or the industry. Second, certain provisions of the proposed rule permitting commercial practice do not apply to ophthalmologists. The term "refractionist" has been deleted so that this distinction is clear.

The term "prescription" is defined in paragraph (h) as those specifications necessary to obtain spectacle lenses. Thus, the prescription that is released to the patient need only contain the data on the refractive status of the patient's eyes, and any information, such as the date or signature of the examining optometrist or ophthalmologist, that state law requires in a legally fillable eyeglass prescription. In addition, all references to contact lenses have been deleted from the definition in order to end the confusion generated by the original definition concerning the obligation of optometrists and ophthalmologists to place the phrase "OK for contact lenses" (or similar words) on prescriptions. No such obligation would exist under the proposed definition. Another purpose of this change is to clarify the fact that the prescription release requirement (§ 456.2) does not affect state laws regulating who is legally permitted to fit contact lenses. This proposed change would not affect the current requirement that optometrists and ophthalmologists give spectacle prescriptions to all patients whose eyes they examine, including those patients who wear or intend to purchase contact lenses.

A "trade name ban" is defined in paragraph (j) to cover any state law or regulation that prohibits optometrists from practicing or holding themselves out to the public under trade or corporate names. The discussion of § 456.4(a)(4) below explains the scope of the proposed rule with respect to eliminating trade name bans on how the states may regulate the use of trade names.

Sections 456.2 through 455.6 of the Eyeglasses Rule have been deleted in accordance with the court's decision in *American Optometric Association* v. *FTC*, 626 F.2d 897 (D.C. Cir. 1980), which remanded those portions of the rule to the Commission for further consideration.

New § 456.2 contains minor modifications to the release of prescription requirement of the Eyeglasses Rule (originally § 456.7) which was upheld by the court in *American Optometric Association* v. *FTC*, and which remains in effect. The rule requires that eye doctors give spectacle prescriptions to consumers

[3] 43 FR 23,992 (1978).

immediately after performing eye examinations. Comment is requested below as to whether the prescription release requirement should be modified in a variety of ways.[4]

Section 456.4(a) would prohibit state or local governments from enforcing certain existing bans on commercial ophthalmic practice. By removing prohibitions on these forms of practice, the rule would permit optometrists and opticians to engage in commercial ophthalmic practice if they desire to do so; it would not mandate that any practitioner engage in any specific mode of practice. At the same time, the rule would not interfere with a state's ability to control specific harmful practices as long as the commercial practices allowed by this section are not directly or indirectly prohibited. Section 456.5, paragraphs (b) through (e), serve primarily to explain the limited scope of § 456.4(a) by providing examples of how the states might regulate commercial practice, if necessary, short of prohibiting it altogether. For this reason, the provisions of § 456.5(b)–(e) are discussed here with the corresponding operative provisions of § 456.4(a).[5]

Paragraph (a)(1) would prevent state and local governments from prohibiting employer-employee or other business relationships between optometrists or opticians and persons other than ophthalmologists or optometrists. Specifically, this section would remove a variety of state-imposed restrictions that prevent optometrists and opticians from working for or associating with non-professional corporations or lay individuals.

The rule would allow the states to take action, however, to protect the health and safety of their citizens to the extent it may be threatened by specific practices. As indicated in § 456.5(b), for example, a state may decide to prevent unlicensed persons from improperly interfering in the professional judgments of optometrists and opticians. Or a state could choose to prohibit commission payments as a form of compensation for optometrists or opticians. The proposed rule would only prohibit regulations or restrictions that effectively ban employer-employee or other business relationships between optometrists or opticians and others.

Paragraph (a)(2) would prohibit state or local restrictions on the number of offices that an optometrist, optician or any other person may operate. This provision would permit any person, including any corporation, who provides eye examinations or ophthalmic goods and services to own or operate any number of offices. Thus, a state under this section could not require that an office be open only when the optometrist who owns it is in personal attendance.

The proposed rule would not, however, prevent states from regulating how services are provided at each office. For example, as explained in § 456.5(c), states could require that ophthalmic goods or eye examinations provided at each office be supplied by a person qualified under state law to do so. The proposed rule would only prohibit regulations that restrict the ownership of any particular number of offices by optometrists, opticians, or other persons.

Paragraph (a)(3) would remove state and local restrictions that prohibit optometrists from locating an office in a pharmacy, department store, shopping center, retail optical dispensary, or other mercantile location. This provision would permit optometrists to establish offices in high-traffic areas, such as drug stores and shopping centers, or near retail opticians. Optometrists would also be able to lease office space from non-professional corporations or lay individuals.

As explained in § 456.5(d), however, the proposed rule would not interfere with a state's ability to enforce general zoning laws. In addition, states would retain the discretion to regulate leasing arrangements between optometrists and corporations or lay persons in order to prevent specific harmful practices. The proposed rule would remove only those regulations that prohibit optometrists from practicing in mercantile locations.

Paragraph (a)(4) woulds prohibit all state or local bans that prevent optomerists from practicing or holding themselves out to the public under a trade name. This provision would permit an optometrist to adopt an assumed or corporate name, or any name other than the one appearing on the petitioner's license, subject of course to the laws and regulations governing deception or infringement that apply to trade name practice by all persons.

Section 456.5(e) explains that the proposed rule would not, however, prevent states from enforcing laws that are reasonably necessary to prevent the deceptove use of trade names. If states desire to ensure full professional identification, for example, they could require that the identity of the optometrist be disclosed to the patient at the time the eye exmination is performed or opthalmic goods and services are dispensed. The proposed rule only would prevent a state from enforcing restrictions that prohibit the practice of optometry under a trade name.

Section 456.4(b) restates the last paragraph of § 456.3 of the original Eyeglasses Rule. It simply exempts every state or local governmental entity or officer from financial liability for violations of the proposed rule.

Section 456.5(f) would make it clear that the Commission intends that the proposed rule could be used as a defense in legal or administrative proceedings, or affirmatively for declarative, injunctive, or other relief.

Section C. Invitation To Comment

All interested persons are hereby notified that they may submit data, views, or arguments on any issue of fact, law or policy which may have bearing upon the proposed rule. Such comments may be either in writing or orally. Written comments will be accepted until April 5, 1985 and should be addressed to James P. Green, Presiding Officer, Federal Trade Commission, Washington, D.C. 20580, 202–523–3564. To assure prompt consideration, comments should be identified as "Ophthalmic Practice Rulemaking Comment." Please furnish five copies of all comments. (Instructions for persons wishing to present their views orally are found in Sections E and F of this notice).

While the Commission welcomes comments on any issues which you feel may have bearing upon the proposed rule, questions on which the Commission particularly desire comments are listed in Section E below. All comments and testimony should be referenced specifically to either the Commission's questions or the section of the proposed rule being discussed. Comments should include reasons and data for the position. Comments opposing the proposed rule or specific provisions should, if possible, suggest a specific alternative. Proposals for alternative regulations should include reasons and data that indicate why the alternatives would better serve the purposes of the proposed rule. Comments should include a full discussion of all the relevant facts and be based directly or firsthand knowledge, personal experience or

[4] The staff had recommended that the rule be modified to require the release of a prescription only when a patient requests one. The Commission has decided to propose no change in this rule provision at this time, but rather to request comment on the issue.

[5] The Commission does not intend to imply that the types of regulation cited in § 456.5(b)–(e) are desirable, but cites them merely as examples of state regulation that would not be eliminated if the proposed rule were adopted.

general understanding of the particular issues addressed by the proposed rule.

Section D. Questions and Issues

In the Advance Notice of Proposed Rulemaking, the Commission invited public comment regarding which hearing format should be used if the Commission decided to intitiate a rulemaking proceeding; however, none of the comments we received dealt with this issue. The Commission has decided to employ a modified version of the rulemaking procedures specified in §1.13 of the Commission's Rules of Practice, proceeding with a single Notice of Proposed Rulemaking and the "no designated issues" format. Set forth below is a list of sepcific questions and issues upon which the Commission particularly desires comment and testimony. The list of questions is not intended to be a list of "disputed issues of material fact that are necessary to resolve," and any right to cross-examine will be determined with reference to the criteria set forth in the Commission's Rules of Practice.

Interested persons are urged to consider carefully the following questions. The Commission retains its authority to promulgate a final rule which differs from the proposed rule in ways suggested by these questions and based upon the rulemaking record.

1. The 1980 BE study selected survey subjects who had myopia, which is a relatively routine visual problem. Is there any evidence to indicate that the quality results would have differed if the study had included patients with less common vision problems?

2. Persons with eye pathology were excluded from the sample in the BE study. The study did, however, attempt to measure whether the tests necessary to detect pathology and assess vision problems were performed. Is the use of "process" tests, rather than outcome tests, inappropriate méthodology? Are there reasons to believe that the procedures and tests performed to detect eye disease were not performed adequately by those optometrists surveyed?

3. The BE study was designed to measure the effects of commercial practice independent of advertising and, in fact, found that commercial practice had an independent downward impact on price even where advertising was permitted. The BE study data, however, were collected before the advent of advertising in some states. Some people have asserted that the study's price findings concerning the impact of advertising restrictions are unreliable because the data were collected before the full impact of the *Bates* case was felt. Are there reasons why the study's findings that commercial practice has an indepndent effect on price should not be relied on?

4. In its study of commercial practice, the FTC's Bureau of Economics used a multivariate statistical technique to make certain adjustments to the raw price data to account for cost of living differences between cities, differences among survey subjects in prescriptive needs, differences among cities in the supply of optometrists, and differences among cities in the demand for optometric services. The Bureau of Economics states that failure to account for the effects of these variables could lead to inappropriate conclusions about the impact of commercial practice restrictions on price. In a study of this nature, is it appropriate to analyze differences between average adjusted prices rather than average unadjusted prices? Would any other adjustment technique have been more appropriate thant he technique used by the Bureau of Economics?

5. The 1983 contact lens wearer study analyzed only cosmetic contact lens wearers. Is there any evidence to indicate that the quality results would have differed if the study's subjects had included wearers who were aphakic or who suffered from unusual medical or visual problems?

6. The contact lens wearer study analyzed current contact lens wearers rather than former wearers. Is there any reason to believe that the distribution of former contact lens wearers (or, "unsuccessful wearers") among the different fitter groups is significantly different than that of current wearers (or "successful wearers")?

7. What are the costs and benefits of trade name bans? How do trade name bans affect the ability of optometrists to engage in commercial practice? Are these bans necessary to prevent deception? Would it be possible for commercial ophthalmic practice to develop if employment, branching and location restrictions were eliminated, but not trade name bans?

8. What is the effect of laws that require that trade name advertising disclose the names of all optometrists practicing under the trade name? Are such disclosure requirements necessary to prevent deception or other harm to consumers?

9. The proposed rule would remove restrictions on commercial optometric practice imposed by state law or regulation. Do private associations also restrain commercial practice through restrictive membership requirements or other means? If state-imposed restrictions were removed, would association-imposed restrictions have a significant impact on the nature and extent of commercial practice? If so, should the proposed rule be amended to remove association-imposed restrictions?

10. Should the prescription release requirement contained in the Eyeglasses Rule be modified to require that spectacle lens prescriptions be given to patients only in those instances where patients requested them? If so, for how long a period of time should ophthalmologists and optometrists be required to respond to that request? Does the current requirement that a prescription be tendered in evey instance result in confusion in some consumers' minds as to whether they should in every instance fill that prescription? What costs does the current requirement impose on ophthalmologists and optometrists who are required to tender a prescription that every patient may not want? Are consumers generally aware of their right to seek and obtain their prescriptions? If so, are consumers generally aware of how they may use their prescriptions?

11. Should the prescription release requirement be modified to require ophthalmologists and optometrists to offer to provide spectacle lens prescriptions to patients? If so, what are the relative merits of requiring that the examiner make that offer (a) orally, (b) by posting a written notice in his or her office, or (c) in some other manner? Should the offer be required to include some explanation of why the offer is being made, or how the offered prescription can be used by the consumer? To what extent, if any, would a requirement to offer to provide prescription reduce the costs of the current requirement?

2. Should the prescription release requirement be repealed altogether? Is this requirement, even when modified to require release only upon request, unnecessary? What are the costs and benefits of the prescription release requirement?

13. Should optometrists and ophthalmologists be required to release duplicate copies of prescriptions to consumers who lose or misplace their original prescriptions? If so, should they be allowed to charge for the duplicate copies?

14. The staff had received few complaints from consumers who wished to obtain replacement or duplicate pairs of eyeglasses from someone other than their original dispenser but were refused access to their current spectacle lens prescriptions. Do a significant number of eyeglass dispensers refuse to return

fillable prescriptions to consumers? Can consumers reasonably avoid such problems? What are the costs and benefits of (a) a rule provision requiring that eyeglass dispensers return fillable prescriptions to consumers, (b) efforts to increase consumer awareness of the need to determine whether a particular dispenser will provide a copy of the prescription before deciding where to purchase eyeglasses, or (c) other actions?

15. The staff has received few complaints from consumers who wanted to buy replacement contact lenses from someone other than their original fitter but were refused access to their lens specifications. Are a significant number of contact lens wearers refused access to their lens specifications? Can consumers reasonably avoid such problems? What are the costs and benefits of (a) a rule provision requiring release of specifications, (b) efforts to increase consumer awareness of the need to determine whether a particular examiner will provide specifications before deciding where to purchase lenses, or (c) other actions?

16. The contact lens study found that the prices charged for replacement contact lenses vary widely. Is that price dispersion explained by differences in lens or service quality, or is it evidence of a lack of competition? If the latter, what is the cause of this lack of competition?

Section E. Public Hearings

Two sets of public hearings will be held on this proposed trade regulation rule. The first will commence on May 20, 1985 at 9:30 a.m. in Room 332, 6th Street and Pennsylvania Avenue, NW, Washington, DC. The second will commence on June 17, 1985, at 9:30 a.m. in Room 12470, 450 Golden Gate Avenue, San Francisco, CA. Tentatively scheduled are 10 days of public hearings at each site.

Persons desiring to present their views orally at the hearings should advise James P. Greenan, Presiding Officer, Federal Trade Commission, Washington, D.C. 20580, 202–523–3564, as soon as possible.

The Presiding Officer appointed for this proceeding shall have all powers prescribed in 16 CFR 1.13(c), subject to any limitations described in this notice.

Section F. Instruction to Witnesses

1. *Advance notice.* If you wish to testify at the hearings, please notify the Presiding Officer immediately by letter or telephone of your desire to appear and file with him or her your complete, word-for-word statement no later than April 26, 1985 for witnesses at the Washington, D.C. hearings and May 31, 1985 for witnesses at the San Francisco, California hearings. (You may testify at only one of the hearings.) This advanced notice is required so that other interested persons can determine the need to ask you questions and have an opportunity to prepare. Any cross-examination that is permitted may cover any of your written testimony, which will be entered into the record exactly as submitted. Consequently, it will not be necessary for you to repeat this statement at the hearing. You may simply appear to answer questions with regard to your written statement or you may deliver a short summary of the most important aspects of the statement within time limits to be set by the Presiding Officer. As a general rule, your oral summary should not exceed twenty minutes.

Prospective witnesses are advised that they may be subject to questioning by designated representatives of interested parties and by members of the Commission's staff. Prospective witnesses are also advised that they may be questioned about any data they have that supports or was used as a basis for general statements made in their testimony. Such questioning will be conducted subject to the descretion and control of the Presiding Officer and within such time limitations as he may impose. In the alternative, the Presiding Officer may conduct such examination himself or he may determine that full and true disclosure as to any issue or question may be achieved through rebuttal submissions or the presentation of additional oral or written statements. In all such instances, the Presiding Officer shall be governed by the need for a full and true disclosure of the facts and shall permit or conduct such examination with due regard for relevance to the factual issues raised by the proposed rule and the testimony delivered by each witness.

2. *Use of Exhibits.* Use of exhibits during oral testimony is encouraged, especially when they are to be used to help clarify technical or complex matters. If you plan to offer documents as exhibits, file them as soon as possible during the period for submission of written comments so they can be studied by other interested persons. If those documents are unavailable to you during this period you must file them as soon as possible thereafter and not later than the deadline for filing your prepared statement. Mark each of the documents with your name, and number them in sequence, (*e.g.*, Jones Exhibit 1). Please also number all pages of each exhibit. The Presiding Officer has the power to refuse to accept for the rulemaking record any hearing exhibits that you have not furnished by the deadline.

3. *Expert Witnesses.* If you are going to testify as an expert witness, you must attach to your statement a *curriculum vitae*, biographical sketch, resume or summary of your professional background and a bibliography of your publications. It would be helpful if you would also include documentation for the opinions and conclusions you express by footnotes to your statements or in separate exhibits. If your testimony is based upon or chiefly concerned with one or two major research studies, copies should be furnished. The remaining citations to other works can be accomplished by using footnotes in your statement referring to those works.

4. *Results of surveys and other research studies.* If in your testimony you will present the results of a survey or other research study, as distinguished from simple references to previously published studies conducted by others, you must also present as an exhibit or exhibits all of the following information that is available to you:

(a) A complete report of the survey or other research study and the information and documents listed in (b) through (e) below if they are not included in that report.

(b) A description of the sampling procedures and selection process, including the number of persons contacted, the number of interviews completed, and the number of persons who refused to participate in the survey.

(c) Copies of all completed questionnaires or interview reports used in conducting the survey or study if respondents were permitted to answer questions in their own words rather than required to select an answer from one or more answers printed on the questionnaire or suggested by the interviewer.

(d) A description of the methodology used in conducting the survey or other research study including the selection of and instructions to interviewers, introductory remarks by interviewers to respondents, and a sample questionnaire or other data collection instrument.

(e) A description of the statistical procedures used to analyze the data and all data tables which underlie the results reported.

Other interested persons may wish to examine the questionnaires, data collection forms and any other underlying data not offered as exhibits and which serve as a basis for your testimony. This information, along with computer tapes that were used to

conduct analyses, should be made available (with appropriate explanatory data) upon request of the Presiding Officer. The Presiding Officer will then be in a position to permit their use by other interested persons or their counsel.

5. *Identification, number of copies, and inspection.* To assure prompt consideration, all materials filed by prospective witnesses pursuant to the instructions contained in paragraphs 1–4 above should be identified as "Ophthalmic Practice Rulemaking Statement" ("and Exhibits," if appropriate), submitted in five copies when feasible and not burdensome, and should include the name, title, address, and telephone number of the prospective witness.

6. *Reasons for requirement.* The foregoing requirements are necessary to permit us to schedule the time for your appearances and that of other witnesses in an orderly manner. Other interested parties must have your expected testimony and supporting documents available for study before the hearing so they can decide whether to question you or file rebuttals. If you do not comply with all of the requirements, the Presiding Officer has the power to refuse to let you testify.

7. *General procedures.* These hearings will be informal and courtroom rules of evidence will not apply. You will not be placed under oath unless the Presiding Officer so requires. You also are not required to respond to any question outside the area of your written statement. However, if such questions are permitted, you may respond if you feel you are prepared and have something to contribute. The Presiding Officer will assure that all questioning is conducted in a fair and reasonable manner and will allocate time according to the number of parties participating, the legitimate needs of each group for full and true disclosure, and the number and nature of the factual issues discussed. The Presiding Officer further has the right to limit the number of witnesses to by heard if the orderly conduct of the hearing so requires.

The deadlines established by this notice will not be extended and hearing dates will not be postponed unless hardship can be demonstrated.

Section G. Notification of Interest

If you wish to avail yourself of the opportunity to question witnesses you must notify the Presiding Officer by March 8, 1985 of your position with respect to the proposed rulemaking proceeding. Your notification must be in sufficent detail to enable the Presiding Officer to identify groups with the same or similar interests respecting the general questions and issues provided in Section E of this notice. The Presiding Officer may require the submission of additional information if your notification is inadequate. If you fail to file an adequate notification in sufficient detail, you may be denied the opportunity to cross-examine witnesses.

Before the hearings commence, the Presiding Officer will identify groups with the same or similar interests in the proceeding. These groups will be required to select a single representative for the purpose of conducting direct or cross-examination. If they are unable to agree, the Presiding Officer may select a representative for each group. The Presiding Officer will notify all interested persons of the identity of the group representatives at the earliest practicable time.

Group representatives will be given an opportunity to question each witness on any issue relevant to the proceeding and within the scope of the testimony. The Presiding Officer may disallow any questioning that is not appropriate for full and true disclosure as to relevant issues. The Presiding Officer may impose fair and reasonable time limitations on the questioning. Given that questioning by group representatives and the staff will satisfy the statutory requirements with respect to disputed issues, no such issues will be designated by the Presiding Officer.

Section H. Post-Hearing Procedures

The Presiding Officer will establish the time that you will be afforded after the close of the hearings to file rebuttal submissions, which must be based only upon identified, properly cited matters already in the record. The Presiding Officer will reject all submissions which are essentially additional written comments rather than rebuttal. The rebuttal period will include the time consumed in securing a complete transcript.

Within a reasonable time after the close of the rebuttal period, the staff shall release its recommendations to the Commission as required by the Commission's Rules of Practice. The Presiding Officer's report shall be released not later than 30 days thereafter and shall include a recommended decision based upon his or her findings and conclusions as to all relevant and material evidence. Post-record comments, as described in § 1.13(h) of the Rules of Practice, shall be submitted not later than 60 days after the publication of the Presiding Officer's report.

Section I. Rulemaking Record

In view of the substantial rulemaking records that have been established in prior trade regulation rulemaking proceedings (and the consequent difficulty in reviewing such records), the Commission urges all interested persons to consider the relevance of any material before submitting it for the rulemaking record. While the Commission encourages comments on its proposed rule, the submission of material that is not generally probative of the issues posed by the proposed rule merely overburdens the rulemaking record and decreases its usefulness, both to those reviewing the record and to interested persons using it during the course of the proceeding. The Commission's rulemaking staff has received similar instruction.

Material that the staff has obtained during the course of its investigation prior to the initiation of the rulemaking proceeding but that is not placed in the rulemaking record will be made available to the public to the extent that it is considered to be nonexempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552.

The rulemaking record, as defined in 16 CFR 1.18(a), will be made available for examination in Room 130, Public Reference Room, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW, Washington, D.C.

Section J. Preliminary Regulatory Analysis

I. Need for, and Objectives of, the Proposed Rule

The Federal Trade Commission (FTC) is examining restrictions on the delivery of eye care services and products in an effort to ensure maximum consumer access to these goods and services at the lowest possible price, without any compromise in the quality of vision care. This preliminary regulatory analysis is included in the Notice of Proposed Rulemaking in order to facilitate its availability to the public.

The proposed rule would remove state-imposed restrictions that bar certain forms of commercial ophthalmic practice and would clarify the current prescription release provisions of 16 CFR Part 456, the Advertising of Ophthalmic Goods and Services Trade Regulation Rule, which is referred to in this analysis as the "Eyeglasses Rule." Detailed information regarding the investigation, findings, and reasoning that support the proposed rule is contained in preceding sections of this Notice and is incorporated by reference

into this analysis, and in the FTC Staff Report entitled "State Restrictions on Vision Care Providers: The Effects on Consumers" (July 1980).

The Federal Trade Commission has identified several such restrictions that it has reason to believe limit competition in the delivery of eye care goods and services and cause substantial consumer injury. These restrictions appear to decrease consumer access to vision care services, increase the cost of these services, and impede the growth of "non-traditional" eye care practices, but fail to provide offsetting improvements in quality of care. The restrictions in question prohibit: (1) Business relationships between optometrists or opticians and lay individuals or firms; (2) the operation or ownership of branch offices by vision care providers; (3) the location of optometrists' offices in pharmacies, department stores, shopping centers, retail optical dispensaries, or other mercantile settings; and (4) the use of trade names by optometrists. The proposed rule would prohibit enforcement of the restrictions enumerated above but would not interfere with a state's ability to enforce specific restrictions aimed at control of harmful practices.

The proposed rule would also clarify the Eyeglasses Rule's current prescription release requirement by modifying the definition of prescription.

II. Legal Authority

The Commission has reason to believe that the public restrictions discussed above may be unfair acts or practices within the meaning of sections 5 and 18 of the Federal Trade Commission Act, 15 U.S.C. 45 and 57(a) because such restrictions may cause substantial injury to consumers that is not outweighed by any countervailing benefits and that consumers cannot reasonably avoid.

III. Alternatives Considered by the Commission

The Commission notes that alternatives under consideration are procedural, not substantive. Unlike some regulatory initiatives where alternative substantive approaches to attain the same ends may exist, in this instance the Commission's intent is to permit certain forms of ophthalmic practice to exist in the marketplace, in the face of state laws explicitly banning them. Thus, the alternatives to the promulgation of a rule focus solely on other approaches for attaining the relaxation of those state restrictions. In the discussion that follows we detail the costs and benefits associated with the attainment of the goal of permitting commercial ophthalmic practice. Assuming the broadest application of successful outcomes, the same costs and benefits would result irrespective of the process used to achieve those ends. We discuss all costs and benefits for the rulemaking option only. To the extent that the use of alternative procedural options may impose different costs and benefits in pursuing the substantive goals, we discuss those in each section.

1. Model State Law

Rather than promulgating a trade regulation rule,the Commission could issue a public report with a model state law or guidelines for voluntary change which embody the Commission's findings and objectives. Adoption of these guidelines in whole or in part would be at the discretion of each state. (See Advance Notice of Proposed Rulemaking, 45 FR 79828–79829 (1980), for a detailed discussion of possible subjects to include in such a model state law.)

2. Cases

One alternative to rulemaking is for the Commission to issue formal complaints on a case-by-case basis against a particular state, private association or ophthalmic practitioner alleged to have engaged in unfair acts or practices.

3. No Further Action by the FTC

The Commission could take no further action and close the investigation. The staff report and economic studies which serve as the primary evidentiary bases for the Commission's decision to proceed with rulemaking could instead be made available to state regulatory bodies in the hope that they would take corrective action in this area.

IV. Cost-Benefit Analysis

The entitles that will be affected by the proposed rule are state and local agencies involved in regulation of vision care providers; optometrists, ophthalmologists, opticians, and other persons engaged in the provision of eye care; and consumers of vision care goods and services. The following cost-benefits analyses of the proposed rule and each alternative refer to particular affected entities whenever possible.

In 1982, approximately 22,000 optometrists, 12,000 ophthalmologists, and 26,000 opticians were engaged in active practice. The majority of optometrists are self-employed or practice with the other optometrists as members of a professional corporation. Approximately 10% of optometrists are employed by large optical chains, department stores, or opticians. Consumers annually spend approximately $6 billion on ophthalmic goods and services. Chain optical stores currently hold 15% of the retail eyeware market.

1. Proposed Rule

Costs, Adverse Effects: No direct compliance costs would be imposed on any affected sector by the proposed rule's removal of state restrictions on commercial forms of practice.

a. *Costs to Affected Government Entities*: The proposed rule would remove state statutes and state board regulations which ban commerical forms of practice. Indirect costs might arise should state or local regulatory agencies decide to enact new regulations to control potentially harmful practices. In addition to the cost involved in enacting such regulations, the regulatory agencies might incur some additional enforcement costs.

B. *Costs to Industry Members:* No direct costs would be imposed on optometrists, ophthalmologists, or opticians by the removal of state bans on commercial forms of practice. The rule would only permit, not require, providers to operate branch offices, maintain offices in mercantile locations, use trade names and be employed by lay corporations and individuals.

The only "costs" borne by industry members would be the indirect effects of doing business in a market where greater consumer choice creates more competition. The indirect effect of the rule on various industry members cannot be determined with any degree of precision. A range of consequences can be expected to flow from this restructuring of the market, depending at least in part of how individual providers respond to the changing market conditions.

In markets where commercial practice is now prohibited, it can be anticipated that commercial firms will enter. The market share that firms will capture in those states cannot be predicted. However, in states that currently permit commercial practice, it appeas to co-exist with traditional solo practice.

Data from studies of the ophthalmic market indicate that this market is price elastic: that is, as prices of eye examinations and eyeglasses decline, there is a proportionately greater increase in consumption. Thus, the staff anticipate an incrase in total expenditures for vision care products and services. However, the market will be a more competitive one. Some less efficient providers will undoubtely lose business.

c. *Costs to Vision Care Consumers:* No direct economic cost would be

imposed on consumers of vision care by the removal of bans on commercial forms of practice. To the contrary, two FTC studies indicate that average prices for eye examinations, eyeglasses, and contact lenses are lower in markets where commercial practice is permitted, and that no adverse impact on the quality of vision care services should result from the removal of restrictions on forms of practice.

Benefits: a. *Benefits to Affected Government Entities:* State and local regulatory agencies would incur lower compliance and enforcement costs if bans on commercial forms of practice were removed. However, these lower costs might be offset to some extent if states or agencies enact new regulations to control potentially harmful practices.

b. *Benefits to Industry Members:* Present vision care practitioners would be able to own and operate more than a limited number of offices, locate in mercantile settings, use a trade name for their practice, and enter into employment, leasing, or other business arrangements with lay individuals and firms, notwithstanding current state law to the contrary. Corporations or other business entities presently selling ophthalmic goods would be able to hire, lease space to, or associate with optometrists in order to offer one-stop shopping to consumers.

c. *Benefits to Vision Care Consumers:* By removing state restrictions on commercial practice, consumers of vision care should be able to purchase vision care goods and services at lower prices without any compromise in quality of care. FTC studies indicate that: (1) Prices are significantly lower in cities where commercial practice and advertising are not restricted; (2) commercial optometrists charge lower prices than non-commercial optometrists; (3) non-commercial providers who operate in markets where commercial practice is permitted charge less than their counterparts in cities where commercial practice is prohibited; and (4) overall quality of care is no lower in commercial than in non-commercial markets. Consumers may be able to obtain these lower prices that result from increased competition from two groups: non-commercial practitioners who lower their prices in response to increased competition and commercial practitioners who offer vision care at low prices by taking advantage of economies of scale. Due to the lifting of restrictions on commercial forms of practice, it can be anticipated that some consumers will purchase vision care on a more frequent basis.

In addition, consumers would be able to obtain one-stop service (eye examination plus eyeglasses or contact lenses) from optometrists who are located near or lease space from a retail optical dispensary in response to the lifting of location restrictions, or from retail optical firms which offer the services of an optometrist to perform eye examinations.

2. No Rule—Model State Law

Costs, Adverse Effects: a. *Costs to Affected Government Entities:* A model state law would impose no costs directly because it is an option to be adopted by state government entities at their discretion.

b. *Costs to Industry Members:* Assuming that all states adopted a model law, costs to industry members should be the same as if a rule were adopted. However, if some states do not enact the model state law while others enact only certain provisions or different versions altogether, the end result would be a lack of uniformity in the state laws concerning commercial practices. This might burden practitioners or firms who wish to maintain interstate operations.

c. *Costs to Vision Care Consumers:* As stated above, no direct economic costs would be imposed on consumers by removal of bans on commercial forms of practice. In addition, on the basis of the results of the FTC studies, no adverse impact on the quality of vision care is expected to result if a state adopts a model state law permitting commercial forms of practice.

Benefits: a. *Benefits to Affected Government Entities:* A model state law would provide states with valuable information, but would not remove state laws. Individuals states or state boards could modify the model law to meet particular circumstances.

b. *Benefits to Industry Members:* If a state adopts a model state law which permits the commercial forms of practice contained in the proposed rule, benefits to industry members in that state would be similar to those resulting from promulgation of a trade regulation rule. This result assumes that commercial practice would not be burdened indirectly by restrictive state enforcement policies or regulations.

c. *Benefits to Vision Care Consumers:* If a state adopts a model state law permitting commercial forms of ophthalmic practice, benefits to consumers in that state would be the same as those resulting from promulgation of the trade regulation rule.

3. Cases Against Private Associations and/or State Government Entities

Costs, Adverse Effects: a. *Costs to Affected Parties:* The issuance of a complaint by the Commission against a private association or against a state regulatory body alleging Section 5 unfairness concerning commercial practice restrictions would result in adjudication costs for that entity. If the Commission issued a final order, a party against whom the complaints were issued would have a comply with the terms of that order. Compliance costs would parallel those of a trade regulation rule.

b. *Costs to Industry Members:* If the Commission pursued the option of a case-by-case adjudication, those cases would necessarily be against states and private associations that have imposed commercial practice bans. Costs to industry members in the event of successful litigation by the Commission would be the same as if a rule were adopted. The only significant difference in procedural costs would be that rulemaking entitles affected industry groups to participate. In adjudication against a specific state governmental entity, affected industry members would have to seek intervenor or *amicus curiae* status.

c. *Costs to Vision Care Consumers:* Assuming the broadest application of a final order, successful litigation would result in the same substantive costs and benefits as rulemaking. However, consumers would not have a right to participate in litigation as they would in rulemaking proceedings.

Benefits: a. *Benefits to Affected Parties:* Private associations or state and local regulatory agencies would incur lower compliance and enforcement costs if bans on commercial forms of practice were removed. However, these lower costs might be offset to some extent if such entities enact new ethical codes or regulations to control potentially harmful practices.

b. *Benefits to Industry Members:* A case against a particular state would produce benefits to industry members in that state similar to those that would result from promulgation of a trade regulation rule.

A case against an association in a state that prohibited commercial practice would result in little if any benefit to industry members. A case against an association in a state that permits commercial practice would enable industry members who wished to engage in commercial practice to enjoy the benefits of association membership.

c. *Benefits to Vision Care Consumers:* Any case that resulted in the removal of barriers to commercial practice in a particular state would produce benefits to consumers in that state similar to those that would result from promulgation of a trade regulation rule.

4. No Further Action by the FTC

Costs, Adverse Effects: a. *Costs to Affected Government Entities:* None. Should the FTC take no further action regarding state-imposed commercial restrictions, these state restrictions will remain operative. FTC materials could be provided to state and local regulatory entities should they wish to consider modification of existing state laws or regulations.

b. *Costs to Industry Members:* Present conditions of practice will probably continue to exist if the FTC terminates its activity regarding commercial restraints. Ophthalmic practitioners who would adopt forms of commercial practice if permitted to do so by state law would be adversely affected by FTC inactivity.

c. *Costs to Vision Care Consumers:* Consumer injury, which the Commission has reason to believe results from restraints on commercial forms of practice, will continue it the Commission terminates its activity in this area. Consumers residing in markets where restrictions exist will be adversely affected since the *status quo* of these markets presently limits competition. As a result, consumers in markets where restrictions exist may continue to face artifically high costs due to limited competition in the eye care goods and services markets.

Benefits: a. *Benefits to Affected Government Entities:* State law and regulation will not be preempted by federal regulation if the FTC takes no further action. State and local governments will not be obliged to reevaluate existing laws or enact any new laws.

b. *Benefits to Industry Members:* Non-commercial practitioners may continue to operate without encountering increased competion.

c. *Benefits to Vision Care Consumers:* None. Consumers would not benefit by termination of Commission activity in this area. The potential benefits associated with commercial practice would be foreclosed if the Commission took no further action and no action at the state level were forthcoming

V. Explanation of why the Commission has Initiated a Rulemaking Proceeding

The Commission has considered all remedial options discussed in Part 1 of this Regulatory Analysis. Of all the alternatives considered, the Commission believes that rulemaking is the most efficient and orderly way to explore further the complex issues involved in this investigation. Although the Commission has decided to initiate a rulemaking proceeding, it should be noted that the commercial practice portion of the proposed rule is essentially deregulatory in nature. By barring enforcement of state restrictions on commercial forms of practice, the proposed rule would reduce barriers to competition and remove direct government interference with practitioners' decisionmaking. The evidence to date indicates that these restrictions result in substantial consumer injury by causing prices to be unnecessarily high and by limiting access to care. At the same time, these restraints do not offer any countervailing benefit in terms of higher quality vision care. In addition, this injury is not one consumers can reasonably avoid because it results from government-imposed restrictions. Therefore, the Commission has reason to believe that such restrictions may be unfair to consumers. The proposed modification of the prescription release requirement would simply clarify the nature and extent of that requirement.

The Commission has carefully considered the option of preparing a model state law. The model state statute could include provisions permitting the forms of practice contained in the proposed rule. The preparation of such a statute, however, would be only a recommendation by the Commission and would depend on voluntary action by the states themselves to accomplish the desired changes. While the preparation of a model state law might provide an impetus for state action, it is unlikely that most or all 50 states would enact the model state law. Despite the 1980 publication of the Bureau of Economics study, which found that commercial practice restrictions cause higher prices but do not maintain or enhance quality of care, there has been little movement at the state level to change the applicable laws. Moreover, a significant change in the current state regulatory scheme is not likely to occur in the time that it could be accomplished by the Commission through promulgation of a trade regulation rule. Finally, some states might only enact certain portions of the model statute or might enact different versions altogether.

Another remedial option is for the Commission to issue complaints against individual states or private associations concerning commercial practice restrictions. The Commission has considered this alternative and has determined that this is not the most appropriate way to proceed for several reasons. First, an action against a private association would still leave state laws intact. Second, a final order against a state or private association might not have application to others; hence, much of the consumer injury believed to exist might not be alleviated. Given the number of states which restrict commercial practice, the Commission has determined that the issuance of individual complaints would not be an efficient use of Commission resources. Only a remedy with nationwide application will eliminate the widespread consumer injury.

For these reasons, the Commission has determined that initiation of a rulemaking proceeding is the most appropriate way to proceed and is the most efficient use of Commission resources. Through rulemaking, the Commission can present a thorough analysis of the issues raised by this investigation. Rulemaking also permits direct participation by all interested parties. If the Commission ultimately determines that state commercial practice restraints are unfair under Section 5, a trade regulation rule is the only remedy that would alleviate the consumer injury nationwide.

Section K. Initial Regulatory Flexibility Analysis

The following discussion is included with the Commission's Preliminary Regulatory Analysis for the proposed rule pursuant to the requirements of the Regulatory Flexilibilty Act, Pub. L. 96–354. The Act requires an analysis of the anticipated impact of the proposed rule on small business.[6] The analysis must contain a description of: (1) The reasons why action is being considered; (2) the objectives of and legal basis for the proposed rule; (3) the class and number of small entities affected; (4) the projected reporting, recordkeeping and other compliance requirements of the proposed rule; (5) any existing relevant federal rules which may duplicate, overlap or conflict with the proposed rule; [7] and (6) any significant alternatives to the proposed rule which accomplish its objectives and, at the same time, minimize its impact on small entities.[8] The preliminary regulatory analysis preceding this section discussed items, 1, 2 and 6 above in detail and therefore will not be repeated

[6] 5 U.S.C. 603(a) (1983).
[7] 5 U.S.C. 603(b) (1)–(5) (1983).
[8] 5 U.S.C. 603(c) (1983).

here.[9] Thus, this analysis will discuss items 3–5 above.

I. Entities to Which the Rule Applies

The proposed rule will directly affect all ophthalmologists and optometrists who perform eye examinations and all optometrists, opticians and others who desire to engage in commerical ophthalmic practice. In 1982, there were approximately 12,000 ophthalmologists, 22,000 optometrists, and 26,000 opticians in active practice in the United States. Most ophthalmologists and optometrists are self-employed. The majority of opticians are self-employed or employed in "independent" retail optical establishments. An increasing number of vision care providers, however, appear to be adopting alternate modes of practice, including partnerships, group practice, and, in the case of optometrists and opticians, employment by or leasing arrangements with commercial optical establishments (such as department stores or large retail optical chains).

Ophthalmologists, optometrists and opticians all provide eye care service to consumers. Ophthalmologists and optometrists examine the eyes and prescribe and dispense eyeglasses and contact lenses. Opticians dispense eyeglasses, and, in some states, they fit and dispense contact lenses.

Most ophthalmologists are doctors of medicine, but some are doctors of osteopathy. They specialize in the diagnosis and treatment of eye diseases and abnormal conditions, including refractive errors. As physicians, they are authorized to perform surgery or to prescribe drugs, lenses or other treatment to remedy these conditions.

Doctors of optometry examine the eye and related structures to determine the presence of vision problems, eye diseases or other abnormalities. They prescribe and adapt corrective lenses or other optical aids and may use visual training aids when indicated to preserve or restore maximum visual acuity. Generally, optometrists do not prescribe drugs, definitively diagnose or treat eye diseases, or perform surgery. In a few states, however, they may be able to treat eye diseases in certain circumstances.

Dispensing opticians (or ophthalmic dispensers) make, fit, supply and adjust eyeglasses according to prescriptions written by ophthalmologists or optometrists. In many states they are also authorized to duplicate spectacle lenses without a prescription, and, in some states, they may fit contact lenses on their own authority or under the direction or supervision of an ophthalmologists or optometrist. By custom, practice and tradition, opticians in many states also dispense contact lenses pursuant to an eye doctor's written specifications or under certain other conditions.

II. Compliance Requirements

The Commission believes that reporting, recordkeeping or other compliance requirements of the proposed rule should not have a disproportionate impact on small entities as compared to large firms. The proposed rule, in fact, would impose no such mandatory requirements on any entities for compliance purposes. Rather, the primary impact of the proposed rule on small entities would stem from the increased competition in the vision care industry which can be anticipated as a result of the rule's deregulatory effects.

The economic impact on individual small entities from increased competition in the vision care industry, although difficult to determine, could be substantial. However, the proposed rule provisions removing certain public restraints on commercial ophthalmic practice would permit small entities (*i.e.*, optometrists and opticians) to engage in alternate modes of practice, including commercial practice, or to expand, should they desire to do so.

The proposed rule provisions removing certain commercial practice restraints could adversely affect some small entities while benefitting others. This result would stem from the increased competition anticipated as a result of removing bans on commercial ophthalmic practice. In states that currently restrict commercial practice, for example, the market share of small entities providing vision care might tend to decline as large commercial practices enter the market. However, other small entities that wish to engage in commercial practice are not permitted to do so under current state laws.

We are aware of no existing federal rules that duplicate, overlap or conflict with the proposed rule.

Section L. Proposed Trade Regulation Rule

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, the provisions of part 1, subpart B of the Commission's Procedures and Rules of Practice, 16 CFR 1.7 *et seq.*, and the Administrative Procedure Act, 5 U.S.C. 553 *et seq.*, has initiated a proceeding for the promulgation of a trade regulation rule concerning ophthalmic practice.

Accordingly, the Commission proposes the following Trade Regulation Rule in the form of a revision of 16 CFR Part 456. Set forth below is the full text of the proposed rule, which has been integrated into the existing Eyeglasses Rule. In the text which immediately follows, new rule provisions are highlighted by arrows and deleted provisions are bracketed.[10] The text of the proposed rule then appears without the deleted portions for easier reading.

PART 456—[ADVERTISING OF OPHTHALMIC GOODS AND SERVICES] ►OPHTHALMIC PRACTICE RULES◄

§ 456.1 Definitions.

(a) A [*"buyer"*] ►"patient"◄ is any person who has had an eye examination.

[(b) The "dissemination of information" is the use of newspapers, telephone directories, window displays, signs, television, radio, or any other medium to communicate to the public any information, including information concerning the cost and availablity of a product or service.]

[(c)] ►(b)◄ An *"eye examination"* is the process of determining the refractive condition of a person's eyes or the presence of any visual anomaly by the use of objective or subjective tests.

[(d)] ►(c)◄ *"Ophthalmic goods"* consist of eyeglasses, or any component of eyeglasses, and contact lenses.

[(e)] ►(d)◄ *"Ophthalmic services"* are the measuring, fitting, and adjusting of ophthalmic goods to the face subsequent to an eye examination.

►(e) An *"ophthalmologist"* is any Doctor of Medicine or Osteopathy who perfoms eye examinations.◄

►(f) An *"optometrist"* is any Doctor of Optometry.◄

[(f)] ►(g)◄ A *"person"* means any party over which the Federal Trade Commission has jurisdiction. This includes individuals, partnerships, corporations, [and] professional associations►, and other entities.◄

[(g)] ►(h)◄ A *"prescription"* is the written specifications for [ophthalmic] ►spectacle◄ lenses which are derived from an eye examination►, including◄ [The prescription shall contain all of the information necessary to permit the buyer to obtain the necessary ophthalmic goods from the seller of his choice. In the case of a prescription for contact lenses, the refractionist must

[9] 5 U.S.C. 605(a) explicitly permits such incorporation.

[10] Some of the deleted portions correspond to those provisions of the original Rule which were remanded by virtue of the decision in American Optometric Association v. Federal Trade Commission, 626 F.2d 897 (D.C. Cir. 1980).

include in the prescription only those measurements and directions which would be included in a prescription for spectacle lenses.]

[All prescriptions shall include] all of the information specified by state law, if any, ►necessary to obtain spectacle lenses.◄

[(h) A "*refractionist*" is any Doctor of Medicine Osteopathy, or Optometry or any other person authorized by state law to perform eye examinations.]

(i) A "*seller*" is any person, or his ►or her◄ employee or agent, who sells or provides ophthalmic goods and services directly to the public.

►(j) A "*trade name ban*" is any state law, rule or regulation which prohibits optometrists from practicing or holding themselves out to the public under the name of the person by whom they are employed or a name other than the name shown on their license or certificate of registration.◄

[§ 456.2 Private Conduct].

[(a) It is an unfair act or practice for sellers to fail to disseminate information concerning ophthalmic goods and services notwithstanding state or local law to the contrary. *Provided,* Violation of this subpart by any seller acting alone shall not be deemed to be a violation of section 5(a)(1) of the Federal Trade Commission Act.]

[To prevent this unfair act or practice, any seller may engage in the dissemination of information concerning ophthalmic goods and services subject to the limitations expressed in § 456.5 below.]

[(b) It is an unfair act or practice for refractionists to fail to disseminate information concerning eye examinations notwithstanding state or local law to the contrary. *Provided,* Violation of this subpart by any refractionist acting alone shall not be deemed to be a violation of section 5(a)(1) of the Federal Trade Commission Act.]

[To prevent this unfair act or practice, any refractionist may engage in the dissemination of information concerning eye examinations. Nothing in this subpart shall excuse a refractionist from compliance with any state or local law which permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations but require that specified affirmative disclosures also be included.]

[§ 456.3 Public Restraints].

[It is an unfair act or practice under Section 5 of the Federal Trade Commission Act for any state or local government entity or any subdivision thereof, state instrumentality, or state or local governmental official to enforce any:]

[(a) prohibition, limitation or burden on the dissemination of information concerning ophthalmic goods and services by any seller or group of sellers, or]

[(b) prohibition, limitation or burden on the dissemination of information concerning eye examinations by any refractionist. *Provided:* Nothing in subpart (b) shall be construed to prohibit the enforcement of a state or local law which permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations, but requires that specified affirmative disclosures also be included.]

[Violation of subparts (a) and (b) shall not be deemed for purposes of section 5(m)(1)(A) or section 19 of the Federal Trade Commission Act to be a violation of section 5(a)(1) of the Act.]

[§ 456.4 Conformance to State Law].

[It is an unfair act or practice under section 5 of the Federal Trade Commission Act:]

[(a) for any seller to reduce, limit or burden the dissemination of information concerning ophthalmic goods and services in order to comply with any law, rule, regulation or code of conduct of any nonfederal legislative, executive, regulatory or licensing entity or any other entity or person, which would have the effect of prohibiting, limiting, or burdening the dissemination of this information, or]

[(b) for any refractionist to reduce, limit, or burden the dissemination of information concerning eye examinations in order to comply with any law, rule, regulation or code of conduct of any nonfederal legislative, executive, regulatory or licensing entity or any other entity or person, which would have the effect of prohibiting, limiting, or burdening the dissemination of this information. *Provided:* To the extent that a state or local law, rule, or regulation permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations, compliance with that law or regulation shall not be construed to reduce, limit or burden the dissemination of information concerning eye examinations.]

[§ 456.5 Permissible State Limitations].

[(a) To the extent that a state or local law, rule, or regulation requires that any or all of the following items be included within any dissemination of information concerning opthalmic goods and services, such a law, rule, or regulation shall not be considered to prohibit, limit, or burden the dissemination of information.]

[(1) whether an advertised price includes single vision and/or multifocal lenses;]

[(2) whether an advertised price for contact lenses refers to soft and/or hard contact lenses;]

[(3) whether an advertised price for ophthalmic goods includes an eye examination;]

[(4) whether an advertised price for ophthalmic goods includes all dispensing fees, and]

[(5) whether an advertised price for eyeglasses includes both frames and lenses.]

[(b) Where a state or local law, rule, or regulation applies to all retail advertisements of consumer goods and services (including a law, rule, or regulation which requires the affirmative disclosure of information or imposes reasonable time, place and manner restrictions), such a law or regulation shall not be considered to prohibit, limit, or burden the dissemination of information.]

[(c) if, upon application of an appropriate state or local governmental agency, the Commission determines that any additional requirement of any such state or local govermental agency deemed by that agency to be necessary to prevent deception or unfairness is reasonable and does not unduly burden the dissemination of information, then that requirement shall be permitted to the extent specified by the Commission.]

[§ 456.6 Private Restraints.]

[(a) It is an unfair act or practice for any person, other than a state or a political subdivision or agency thereof, to prohibit, limit or burden:]

[(1) the dissemination of information concerning opthalmic goods and services by any seller;]

[(2) the dissemination of information concerning eye examinations by any refractionist. *Provided:* Nothing in this subpart shall be construed to prohibit any person from imposing reasonable affirmative disclosure requirements on the dissemination of information concerning eye examinations.]

[(b) Any organization or association which is not composed primarily of sellers and/or refractionists, which adopts or enforces self-regulatory guidelines for the dissemination of information which apply to all retail advertisements of consumer goods and

services, shall not be deemed to be in violation of this subpart.]

[(c) The conditioning of membership in a professional or trade association of sellers or refractionists on a requirement that members or prospective members of that association not engage in the dissemination of information concerning opthalmic goods and services and eye examinations or a requirement that opthalmic goods and services be advertised only in a prescribed manner shall be deemed to prohibit, limit or burden the dissemination of that information.]

§ 456.[7] ►2◄ Separation of Examination and Dispensing.

[In connection with the performance of eye examinations] ►I◄t is an unfair act or practice for [a refractionists] ►an opthalmologist or optometrist◄ to:

(a) Fail to give to the [buyer] ►patient◄ [a] ►one◄ copy of the [buyer's] ►patient's spectacle lens◄ precription immediately after the eye examination is completed. *Provided*: [A refractionist] ►An ophthalmologist or optometrist◄ may refuse to give the [buyer] ►patient◄ a copy of the [buyer's] ►patient's◄ prescription until the [buyer] ►patient◄ has paid for the eye examination, but only if that [refractionist] ►ophthalmologist or optometrists◄ would have required immediate payment from that [buyer] ►patient◄ had the examination revealed that no ophthalmic goods were required;

(b) Condition the availability of an eye examination to any person on a requirement that [that person] ►the patient◄ agree to purchase any opthalmic goods from the [refractionist] ►opthalmologist or optometrist◄;

(c) Charge the [buyer] ►patent◄ any fee in addition to the [refractionist's] ►ophthalmologist's or optometrist's◄ examination fee as a condition to releasing the prescription to the [buyer] ►patient◄. *Provided*: [A refractionist] ►An opthalmologist or optometrist◄ may charge an additional fee for verifying ophthalmic goods dispensed by another seller when the additional fee is imposed at the time the verification is performed; or

(d) Place on the prescription, or require the [buyer] ►patient◄ to sign, or deliver to the [buyer] ►patient◄ a form or notice waiving or disclaiming the liability or responsibility of the [refractionist] ►ophthalmologist or optomertrist◄ for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller.

§ 456.[8] ►3◄ Federal or State Employees.

[Nothing in this part shall be construed to prohibit any federal, state or local government entity from adopting and enforcing standards or requirements concerning the dissemination of information and release of prescriptions by sellers or refractionists employed by those governmental entities.]

►The requirements of § 456.2 of this rule do not apply to ophthalmologists, optometrists or sellers in the employ of any federal, state or local governmental entity.◄

►§ 456.4 State Bans on Commercial Practice.

(a) It is an unfair act or practice for any state or local governmental entity to enforce any law, rule or regulation which directly or indirectly:

(1) Prohibits employer-employee or other business relationships between optometrists or sellers and persons other than ophthalmologists or optometrists;

(2) Limits the number of offices which an optometrist or seller may own or operate;

(3) Prohibits an optometrist from practicing in a pharmacy, department store, shopping center, retail optical dispensary or other mercantile location;

(4) Imposes a trade name ban.

(b) If any state or local governmental entity or officer violates any of the provisions of § 456.4(a) (1)–(4), that person will not be subject to any liability under Sections 5(m)(1)(A) or 19 of the Federal Trade Commission Act.

§ 456.[9] ►5◄ Declaration of Commission Intent.

[(a) It is the purpose of this part to allow retail sellers of ophthalmic goods and services to disseminate information concerning those goods and services in a fair and nondeceptive manner to prospective purchasers. This part is intended to eliminate certain restraints, burdens, and controls imposed by state and local governmental action as well as by private action on the dissemination of information, including advertising, concerning ophthalmic goods and services.]

[It is the intent of the Commission that this part shall preempt all state and local laws, rules, or regulations that are repugnant to this part, and that would in any way prevent or burden the dissemination of information by retail sellers of ophthalmic goods and services to prospective purchasers, except to the extent specifically permitted by this part. All state or local laws, rules, or regulations which burden the dissemination of information by requiring affirmative disclosure specifically addressed to ophthalmic goods and services are preempted, except for those specifically permitted by this part. State and local laws, rules, or regulations which apply to advertising of all consumer goods and services, including those that require affirmative disclosure of information, are not preempted.]

[(b) It is the Commission's intent that state laws which do not permit refractionists to disseminate information concerning eye examinations, including information concerning the cost and availability of those examinations, be preempted. State and local laws, rules or regulations which require affirmative disclosure of information in all disseminations of information concerning eye examinations are not preempted.]

[(c) The Commission intends this part to be as self-enforcing as possible. To that end, it is the Commission's intent that this part may be used, among other ways, as a defense to any proceeding of any kind which may be brought against any retail seller of ophthalmic goods and services or refractionist who advertises in a nondeceptive and fair manner.]

[(d) It is not the Commission's intent to compel any seller or refractionist to disseminate information by virtue of this part. On the contrary, the provisions of this part are intended solely for the protection of those sellers and refractionists who want to disseminate information but have been restrained or prevented from advertising due to the prohibitions and restrictions of state and local laws and regulations, or by private action.]

[(e)] (a) In prohibiting the use of waivers and disclaimers of liability in § [456.7(d)] 456.2(d), it is not the Commission's intent to impose liability on [a refractionist] an ophthalmologist or optometrist for the ophthalmic goods and services dispensed by another seller pursuant to that [refractionists's] ophthalmologist's or optometrist's prescription.

►(b) It is the purpose of this rule to allow optometrists or sellers of ophthalmic goods and services to work for or enter into other business relationships (such as partnerships or franchise agreements) with non-professional corporations or unlicensed persons. The rule is not intended to interfere with a state's ability to enforce any law, rule, or regulation designed to control specific harmful practices, such as improper interference in the professional judgment of optometrists or sellers or compensation schemes used to pay employed optometrists or sellers

which encourage over-prescription so long as the law, rule, or regulation does not directly or indirectly prohibit optometrists or sellers from working for or entering into other business relationships with nonprofessional corporations or unlicensed persons.◄

►(c) It is the purpose of this rule to allow optometrists, sellers, or any other person to own or operate any number of offices. The rule is not intended to interfere with a state's ability to enforce any law, rule, or regulation requiring that opthalmic goods, services or eye examinations provided at each office be supplied by a person qualified under state law to do so or regulating the services provided at each office, as long as states do not directly or indirectly limit the number of offices which an optometrist or seller can own or operate.◄

►(d) It is the purpose of this rule to allow optometrists to practice in a pharmacy, department store, shopping center, retail optical dispensary or other mercantile location. The rule is not intended to interfere with the state's ability to enforce general zoning laws or any law, rule, or regulation which prohibits the location of optometric or optical practice in areas which would create a public health or safety hazard.◄

►(e) It is the purpose of this rule to allow optometrists to practice or hold themselves out to the public under trade names. The rule is not intended to prevent states from enforcing any law, rule, or regulation which requires that the identity of an optometrist be disclosed to a patient at the time an eye examination is performed or ophthalmic goods or services are dispensed. This rule also is not intended to prohibit states from enforcing any state law, rule, or regulation that is reasonably necessary to prevent the deceptive use of trade names in advertising.◄

►(f) The Commission intends the rule to be as self-enforcing as possible. To that end, it is the Commission's intent that this rule may be used, among other ways, as a defense to any proceeding of any kind which may be brought against any seller or optometrist for practicing under a trade name, working for or associating with a non-professional corporation or unlicensed person, operating branch offices or practicing in a mercantile location.◄

[(f)] ►(g)◄ The rule, each subpart, and the Declaration of Commission Intent and their application are separate and severable.

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Part 456—Ophthalmic Practice Rules

§ 456.1 Definitions

(a) A "*patient*" is any person who has had an eye examination.

(b) An "*eye examination*" is the process of determining the refractive condition of a person's eyes or the presence of any visual anomaly by the use of objective or subjective tests.

(c) "*Ophthalmic goods*" consist of eyeglasses, or any component of eyeglasses, and contact lenses.

(d) "*Ophthalmic services*" are the measuring, fitting, and adjusting of ophthalmic goods to the face subsequent to an eye examination.

(e) An "*ophthalmologist*" is any Doctor of Medicine or Osteopathy who performs eye examinations.

(f) An "*optometrist*" is any Doctor of Optometry.

(g) A "*person*" means any party over which the Federal Trade Commission has jurisdiction. This includes individuals, partnerships, corporations, professional associations, or other entities.

(h) A "*prescription*" is the written specifications for spectacle lenses which are derived from an eye examination, including all of the information specified by state law, if any, necessary to obtain spectacle lenses.

(i) A "*seller*" is a person, or his employee or agent, who sells or provides ophthalmic goods and services directly to the public.

(j) A "*trade name ban*" is any state law, rule or regulation which prohibits optometrists from practicing or holding themselves out to the public under the name of the person by whom they are employed or a name other than the name shown on their license or certificate of registration.

§ 456.2 Separation of Examination and Dispensing

It is an unfair act or practice for an ophthalmologist or optometrist to:

(a) Fail to give to the patient one copy of the patient's spectacle lens prescription immediately after the eye examination is completed. Provided: An ophthalmologist or optometrist may refuse to give the patient a copy of the patient's prescription until the patient has paid for the eye examination, but only if that ophthalmologist or optometrist would have required immediate payment from that patient had the examination revealed that no ophthalmic goods were required;

(b) Condition the availability of an eye examination to any person on a requirement that the patient agree to purchase any ophthalmic goods from the ophthalmologist or optometrist;

(c) Charge the patient any fee in addition to the ophthalmologist's or optometrist's examination fee as a condition to releasing the prescription to the patient. *Provided*: An ophthalmologist or optometrist may charge an additional fee for verifying ophthalmic goods dispensed by another seller when the additional fee is imposed at the time the verification is performed; or

(d) Place on the prescription, or require the patient to sign, or deliver to the patient a form or notice waiving or disclaiming the liability or responsibility of the opthalmologist or optometrist for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller.

§ 456.3 Federal or State Employees

The requirements of Section 456.2 of this rule do not apply to ophthalmologists, optometrists or sellers in the employ of any federal, state or local governmental entity.

§ 456.4 State Bans on Commercial Practice.

(a) It is an unfair act or practice for any state or local governmental entity to enforce any law, rule or regulation which

(1) Prohibits employer-employee or other business relationships between optometrists or sellers and persons other than ophthalmologists or optometrists;

(2) Limits the number of offices which an optometrist or seller may own or operate;

(3) Prohibits optometrist from practicing in a pharmacy, department store, shipping center, retail optical dispensary or other mercantile location.

(4) Imposes a trade name ban.

(b) If any state or local governmental entity or officer violates any of the provisions of § 456.4(a) (1)–(4), that person will not be subject to civil penalty, redress, or any other monetary liability under sections 5(m)(1)(A) or 19 of the Federal Trade Commission Act.

§ 456.5 Declaration of Commission Intent

(a) In prohibiting the use of waivers and disclaimers of liability in § 456.2(d), it is not the Commission's intent to impose liability on an ophthalmologist or optometrist for the ophthalmic goods and services dispensed by another seller pursuant to the ophthalmologist's or optometrist's prescription.

(b) It is the purpose of the rule to allow optometrists or sellers of ophthalmic goods and services to work for or enter into other business relationships (such as partnerships or

franchise agreements) with non-professional corporations or unlicensed persons. The rule is not intended to interfere with a state's ability to enforce any law, rule, or regulation designed to control specific harmful practices, such as improper interference in the professional judgment of optometrists or sellers or compensation schemes used to pay employed optometrists or sellers which encourage over-prescription, so long as the law, rule, or regulation does not directly or indirectly prohibit optometrists or sellers from working for or entering into other business relationships with non-professional corporations or unlicensed persons.

(c) It is the purpose of this rule to allow optometrists, sellers, or any other person to own or operate any number of offices. The rule is not intended to interefere with a state's ability to enforce any law, rule, or regulation requiring that ophthalmic goods, services or eye examinations provided at each office be supplied by a person qualified to do so or regulating the services provided at each office, as long as states do not directly or indirectly limit the number of offices which an optometrist, seller or any other person may own or operate.

(d) It is the purpose of this rule to allow optometrists to practice in a pharmacy, department store, shopping center, retail optical dispensary or other mercantile location. The rule is not intended to interfere with the state's ability to enforce general zoning laws or any law, rule, or regulation which prohibits the location of optometric or optical practice in areas which would create a public health or safety hazard.

(e) It is the purpose of this rule to allow optometrists to practice or hold themselves out to the public under trade names. The rule is not intended to prevent states from enforcing any law, rule, or regulation which requires that the identity of an optometrist or seller be disclosed to a patient at the time an eye examination is performed or ophthalmic goods or services are dispensed. This rule also is not intended to prohibit states from enforcing any state law, rule, or regulation that is reasonably necessary to prevent the deceptive use of trade names in advertising.

(f) The Commission intends the rule to be as self-enforcing as possible. To that end, it is the Commission's intent that this rule may be used, among other ways, as a defense to any proceeding of any kind which may be brought against any seller or optometrist for practicing under a trade name, working for or associating with a non-professional corporation or unlicensed person, operating branch offices or practicing in a mercantile location.

(g) The rule, each subpart, and the Declaration of Commission Intent and their application are separate and severable.

By direction of the Commission, Commissioner Azcuenaga abstaining.

Emily H. Rock,

Secretary.

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